

## Freedom of Information Act 2000 (FOIA)

### Decision Notice

**Date:** 14 October 2013

**Public Authority:** The Assembly Ombudsman for Northern Ireland  
**Address:** 33 Wellington Place  
Belfast  
BT1 6HN

#### Decision (including any steps ordered)

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1. The complainant has requested information obtained by the Assembly Ombudsman for Northern Ireland relating to a complaint he submitted to him. The Ombudsman withheld this information under section 44(1)(a) of the FOIA. The Commissioner's decision is that the Ombudsman was entitled to rely on the exemption at section 44(1)(a). The Commissioner requires no steps to be taken.

#### Request and response

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2. On 3 December 2012, the complainant requested the following information from the Ombudsman:  
  
*'...I wish to receive under the "Freedom of Information Act" all details relating to your investigation of my complaint'.*
3. The Ombudsman responded to the complainant on 21 December 2012. It advised the complainant that most of the information he requested was his own personal data, but that this was exempt from disclosure by virtue of section 31(4) of the Data Protection Act 1998 (the DPA). The Ombudsman further stated that the requested information which was not the complainant's personal data was exempt from disclosure under section 44(1)(a) of the FOIA.
4. The complainant requested an internal review on 30 December 2012. The Ombudsman wrote to the complainant on 30 January 2013 to advise that it had completed the internal review. The outcome was that the Ombudsman upheld his decision to refuse the request on the basis of section 31(4) of the DPA and section 44(1)(a) of the FOIA.

## **Scope of the case**

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5. On 7 March 2013 the complainant contacted the Commissioner to complain about the way his request for information had been handled.
6. The Commissioner notes that information which is the personal data of the applicant is exempt from disclosure under the FOIA by virtue of section 40(1) of that Act. This is because the DPA provides a separate access regime in relation to an individual's personal data. The Commissioner firstly conducted an assessment under section 42 of the DPA into the Ombudsman's compliance with that access regime. This was completed in July 2013. The section 42 assessment does not form part of this decision notice, because it constitutes a separate legal process from a section 50 complaint.
7. On completion of the section 42 assessment the Commissioner proceeded to investigate the FOIA element of the complaint. Therefore the decision notice in this case relates only to the requested information which was not the complainant's personal data.

## **Reasons for decision**

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### **Section 44(1)(a) exemption**

8. The Ombudsman refused to disclose the withheld information under section 44(1)(a) of the FOIA. Section 44(1)(a) provides an exemption from disclosure under the FOIA for information which is prohibited from disclosure under any law or enactment. It is an absolute exemption, so if the statutory bar applies then the information is exempt and no public interest test is necessary.
9. In its refusal notice the Ombudsman cited article 19 of The Ombudsman (Northern Ireland) Order 1996 as a statutory prohibition under section 44 of the FOIA. The text of article 19 of the Order is set out in annex 1 at the end of this notice.
10. The Ombudsman explained that under this Order it is not permitted to disclose any information obtained in the course of, or for the purposes of, the investigation of a complaint, except in very limited circumstances. These exceptions are also set out in the legal annex. The Ombudsman confirmed that none of these exceptions applied in this case, and therefore the information could not be disclosed to the complainant.

11. The Commissioner has inspected the withheld information in this case and has considered whether it was “obtained” by the Ombudsman as described by the Order. The Commissioner notes the Information Tribunal’s comments in the case of *Purser v Information Commissioner & Local Government Ombudsman*<sup>1</sup>, where the Tribunal considered information generated by the investigating officer:

*“In the course of this investigation there was **the generation of information and analysis derived from the material supplied** (emphasis added) and the legal framework of the Ombudsman”.*

12. The Tribunal accepted that such information met the test for having been “obtained” by the Ombudsman, and consequently, that this information would fall under the scope of the statutory prohibition on disclosure.
13. The Commissioner notes that in this case the withheld information which is not the complainant’s personal data comprises two classes of information:
- i) information provided by the authority which was the subject of the complaint, and
  - ii) material generated by the Ombudsman’s staff in relation to the investigation.
14. The Commissioner has inspected all the withheld information in this case. The Commissioner is satisfied that the information provided by the authority was clearly obtained by the Ombudsman, and thus falls under the statutory bar. The Commissioner also accepts that the material generated by the Ombudsman’s staff meets the Tribunal’s description at paragraph 11 above, since it is derived from the information provided by the complainant and the authority which is the subject of his complaint.
15. Therefore the Commissioner is satisfied that all the withheld information in this case was “obtained” by the Ombudsman during the course of the investigation of the complaint. The Commissioner is further satisfied that responding to an information request made under the FOIA is not one of the reasons for disclosure provided for in sub-sections a) – e) of article 19 of the Order. The Commissioner accepts the Ombudsman’s argument that none of these exceptions apply in this case, and therefore the information may not be disclosed to the complainant.

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<sup>1</sup> Appeal no EA/2010/0188

16. Accordingly, the Commissioner finds that the Ombudsman was entitled to rely on the exemption at section 44(1)(a) of the FOIA, by virtue of article 19 of the Order.

## Right of appeal

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17. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)  
GRC & GRP Tribunals  
PO Box 9300  
LEICESTER  
LE1 8DJ

Tel: 0300 1234504  
Fax: 0116 249 4253  
Email: [informationtribunal@hmcts.gsi.gov.uk](mailto:informationtribunal@hmcts.gsi.gov.uk)  
Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

18. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
19. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

**Signed .....**

**Alexander Ganotis**  
**Group Manager – Complaints Resolution**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**

## **Annex 1**

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**Article 19 of The Ombudsman (Northern Ireland) Order 1996** provides that:

19 (1) Information obtained by the Ombudsman or his officers in the course of, or for the purposes of, an investigation under this Order shall not be disclosed except for the purposes of -

- (a) the investigation and any report to be made thereon under this Order;
- (b) any proceedings for an offence under the Official Secrets Acts 1911 to 1989 alleged to have been committed in respect of information obtained by the Ombudsman or any of his officers by virtue of this Order;
- (c) any proceedings for an offence of perjury alleged to have been committed in the course of an investigation under this Order;
- (d) an inquiry with a view to the taking of proceedings of the kind mentioned in sub-paragraphs (b) and (c); or
- (e) any proceedings under Article 15.